

SUBCOMMITTEE #3:

Health & Human Services

Chair, Senator Bill Monning

Senator Mark DeSaulnier

Senator Bill Emmerson



April 11, 2013

9:30 a.m. or Upon Adjournment of Session

Room 4203
(John L. Burton Hearing Room)

Staff: Jennifer Troia

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* Also includes 0530 Health & Human Services Agency, Office of Systems Integration

PLEASE NOTE: Only those items contained in this agenda will be discussed at this hearing. Please see the Senate Daily File for dates and times of subsequent hearings. Issues will be discussed in the order as noted in the Agenda unless otherwise directed by the Chair.

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ISSUES RECOMMENDED FOR VOTE-ONLY CALENDAR

A. 4300 Department of Developmental Services (DDS)

1. Proposed trailer bill clean-up language for Welfare & Institutions Code Section 6500

DDS proposes to clarify that changes made last year to Section 6500 of the Welfare & Institutions Code were not intended to preclude court-ordered placements in settings less restrictive than developmental centers (DCs). The Department indicates that at least one public defender has misinterpreted the changes made in last year's budget trailer bills [AB 1472 (Chapter 25, Statutes of 2012) and AB 1471 (Chapter 439, Statutes of 2012)] in this manner.

The changes made in these 2012-13 budget trailer bills related to savings anticipated to be achieved within the DDS budget and included a series of statutory revisions intended to redesign services for consumers with challenging needs. These changes, which are anticipated to result in \$20 million GF savings annually, include restrictions on the statutory criteria for admissions to DCs, limitations on the use of locked mental health facilities and out-of-state placements, and provisions to strengthen the capacity of the community to serve individuals with challenging needs (including expanded availability of Adult Residential Facilities for Individuals with Special Health Care Needs and the creation of a statewide Specialized Resource Service). Early implementation of the changes was discussed at an oversight hearing in October 2012.

Recommendation: APPROVE the proposed trailer bill language, to be refined as necessary in the trailer bill process.

ISSUES FOR DISCUSSION

Public testimony will be taken for items listed in this section.

A. 5180 Department of Social Services (DSS) – Child Welfare Services

1. Overview of Child Welfare Services (CWS)

The CWS system includes child abuse prevention, emergency response to allegations of abuse and neglect, supports for family maintenance and reunification, and out-of-home foster care. The total proposed 2013-14 budget for the Realigned CWS and Adoptions programs is \$5.2 billion (\$2.4 billion federal funds, \$1.6 billion 2011 realignment funds, and \$1.2 billion county funds). In general, around half of child welfare funds support counties to administer or provide the programs and half support payments to care providers.

Foster Care Caseload Trends:¹ On October 1, 1998, there were approximately 117,000 children in foster care in California. By October 1, 2012, that figure had dropped to around 61,000 children (including around 4,400 children under probation department supervision who reside in foster care placements). The department attributes much of the recent decades' caseload decline to upfront efforts to prevent the need for out-of-home care and back-end efforts to find permanence for children in care more quickly.

Some Background About Children In Foster Care: It is well documented that children and youth who experience foster care and those who emancipate from care are highly at risk for disproportionate challenges related to education, health, and mental health, among other domains. As of October 2012, 58 percent of foster children had been in care for less than two years, while 16 percent had been in care for longer than five years. Nearly half were identified as Hispanic/Latino, while a quarter were identified as White/Caucasian and nearly a quarter as Black. A smaller number were identified as Asian/Pacific Islander (2 percent) and Native American (one percent).² More than half of children exiting foster care reunify with their parents or other caregivers.

The following chart identifies where most children in foster care reside and the rates of monthly payments for their care and supervision:

¹ Data in this document on caseload and characteristics is from *Child Welfare Services Reports for California*. Retrieved March 27 and April 6, 2013, from the University of California at Berkeley Center for Social Services Research website. URL: http://cssr.berkeley.edu/ucb_childwelfare.

² Compared to the overall population of children in California, this reflects over-representation of children identified as Black and under-representation of children identified as Hispanic/Latino and White/Caucasian. Children identified as Native American are also over-represented, while Asian/Pacific Islanders are under-represented. There are a number of federal, state, and local initiatives that include work to reduce these disproportionalities and other identified disparities.

Placement Types	Percent of Children in Foster Care on 1/1/12*	Range of Basic Monthly Payment Rates	Potential Supplements for Children who Qualify	Administration and Social Worker Cost Built into Rate
Kin caregiver**	33%	Age 0-4 -- \$640 Age 15-19 -- \$799	Age 0-19 -- \$200 to \$2,000	\$0
Guardian	11%			\$0
Foster Family Home	9%			\$0
Foster Family Agency-Certified Home	26%	Age 0-4 -- \$829 Age 15-20 -- \$988	Age 0-4 -- \$189 Age 15-19 -- \$189	Age 0-4 -- \$868 Age 15-19 -- \$968
Group Home	10%	Level 1 -- \$2,223 Level 12 -- \$9,419	\$0	\$0

* This column includes both child-welfare and probation-supervised foster children.

** The Kin caregiver population that is not federally eligible for AFDC-FC instead receives a monthly TANF grant of \$345 (based on a child-only CalWORKs grant).

Performance Measures & Accountability: The federal Administration for Children and Families (ACF) conducts Child & Family Services Reviews (CFSRs) of states' child welfare systems, which include measures of outcomes related to the safety, permanency, and well-being experienced by children and families served, as well as systemic factors. ACF performed its most recent CFSR in California in 2008. The state did not achieve substantial conformity (compliance in 95 percent of cases) with any outcome measures, but did achieve substantial conformity with three of seven systemic factors. According to ACF, challenges included high caseloads and turnover of social workers, insufficient foster homes, a lack of caregiver support and training, and a lack of needed services (e.g., mental health and substance abuse). In response, DSS developed a Program Improvement Plan (PIP). The department indicates that the state has now met all of the PIP targets and been released from any potential penalties resulting from the 2008 review. It is important to note, however, that not all of the PIP targets were set at a level that would necessarily bring the state into full compliance in future review.

The Child Welfare System Improvement and Accountability Act (AB 636, Chapter 678, Statutes of 2001) also created a statewide accountability system that became effective in 2004. It includes 14 performance indicators monitored at the county-specific level and a process for counties to develop System Improvement Plans (SIPs).

Recent Budget Actions: As described in the next item, the 2011-12 and 2012-13 budgets realigned \$1.6 billion in state funding for the CWS, foster care, and adoptions programs, to the counties. In addition, over the last several years, the state increased monthly care and supervision rates paid to group homes, foster family homes, and foster family agency-certified homes as a result of litigation.

Staff Comment and Recommendation: This is an informational item, and no action is required.

Questions:

1. What are some factors that led to the declining foster care caseload over the last decade or two? How are caseload trends expected to look in the near future?
2. Do you know when the federal government will conduct the next Child and Family Service Review? What efforts endure to improve outcomes that continue to need improvement?

2. Realignment of CWS and Adoptions Programs

Budget Issue: The 2011 public safety realignment and subsequent related legislation realigned approximately \$1.6 billion for California's Child Welfare Services and adoptions programs (CWS) to the counties. Funding for a limited number of programs or activities and the licensing of children's residential placements was not realigned. The General Fund (GF) resources for CWS that became 2011 realignment funding reflected state costs for the following programs (many of which receive other matching funds as well):

CWS Program	Description	Realignment Funds (Formerly GF) In 2011-12
Child Welfare Services	Services to ensure the safety of children, including emergency response to allegations of abuse or neglect	\$670 million
Foster Care	Administration of and monthly assistance payments for out-of-home care and supervision	\$431 million
Adoption Assistance Program	Monthly assistance payments to families who have adopted children who meet criteria for special needs	\$382 million
Adoptions Programs	Adoption-related services and oversight	\$64 million ³
Child Abuse Prevention	Efforts to prevent abuse and neglect	\$13 million
Total		\$1.560 billion

Total realignment funding for Protective Services [which includes CWS and Adult Protective Services funding (APS)], as estimated for recent years and 2013-14 includes:

	2011-12	2012-13	2013-14	2014-15
Funding for Extended Foster Care (AB 12)		\$18 million	\$20 million	\$15 million
Protective Services Growth Funding ⁴			\$158 million	\$137 million
Total Realignment Base Funding for Protective Services (including CWS and APS)	\$1.622 billion	\$1.640 billion	\$1.818 billion	\$1.970 billion

³ These costs do not include \$6 million associated with Agency Adoptions.

⁴ Growth is reflected here in the year it is anticipated to be distributed to the counties.

Additional Background on Financing Changes Under Realignment: Before the 2011 realignment, the department estimated the costs associated with meeting federal and state requirements for the estimated numbers of children and family to be served as part of the annual budget process. The state and counties shared non-federal costs for these programs in various ratios--with the highest county share of 60 percent for foster care and lowest of 25 percent in AAP. Under the 2011 realignment, the total funding for CWS is instead determined by the amount available from designated funding sources (a specified percent of the state sales and use tax and established growth allocations) that are directed to the counties and corresponding matching funds. Both before and after realignment, certain CWS expenditures, including payment rates for care providers that are statutorily established, are provided on an entitlement basis.

Realignment Superstructure: The 2012-13 budget included an ongoing superstructure for the 2011 realignment. The two main accounts are: 1) the Support Services Account, and 2) the Law Enforcement Services Account. The Support Services Account has two Subaccounts: 1) Protective Services, and 2) Behavioral Health. Along with funding for Adult Protective Services, CWS funding is provided from the Protective Services Subaccount. Funding totaling \$53.9 million for extended foster care for 18 to 21 year olds, pursuant to AB 12 (Chapter 559, Statutes of 2012) and subsequent legislation, will also be provided over three years in the Protective Services Subaccount base.

Under the superstructure, program growth will be distributed on roughly a proportional basis between accounts, and then subaccounts. The Protective Services Subaccount will receive 40 percent of growth funding allocated to the Support Services Account until \$200 million identified for CWS base restoration is funded. Counties have authority to transfer a maximum of 10 percent of the lesser subaccount between subaccounts (but not the two main accounts) for up to one year. Proposition 30, which the voters passed in November 2012, also established mandate and fiscal protections for counties. Trailer bill provisions in 2012-13 additionally established programmatic flexibility that allows counties, via action by boards of supervisors after publicly noticed discussion, to discontinue some programs or services that were previously funded with only General Fund, including, e.g., clothing allowance and specialized care increments added to provider rates and Kinship Support Services Programs.

Roles of the State and Counties: Before the 2011 realignment, California already carried out the day-to-day responsibilities of its front-line CWS programs at the county level, with some variation between county programs. At the same time, DSS was responsible for oversight, statewide policy and regulation development, technical assistance, and ensuring federal compliance. After realignment, the state must maintain the bulk of these same responsibilities. Prior to realignment, the state was also at risk for the full costs of any federally imposed penalties stemming from federal Child and Family Service Reviews. Under realignment, counties whose performance contributed to an applicable penalty pay a share of the penalty if realignment revenues were adequate to fully fund the 2011 base and they did not spend a minimum amount of allocated funding on CWS.

Required Reporting on Realignment: DSS is required to report annually, beginning on April 15, 2013, to the Legislature regarding outcome and expenditure data and impacts of the realignment of CWS and APS programs. These reports must also be posted on the

department's website. Counties are not, however, required to report to DSS regarding the specific use of growth funds. While it is still early (especially given a lag in the timing of actual receipt of funds at the county level), the County Welfare Directors Association indicates that generally, a number of counties are considering using growth funds to hire staff or reinstate service contracts they previously reduced or eliminated due to state budget reductions.

Staff Comment & Recommendation: Together with Assembly Budget Committee and other Legislative staff, Subcommittee staff has been working with the Administration to ensure that key programmatic and fiscal information that used to be provided in January and May budget estimates will continue to be provided to the Legislature and public. It does not appear that a specific action is necessary to effectuate these goals at this point, but staff does recommend that the Subcommittee affirm its expectation that this kind of information will continue to be provided and direct staff to continue working with the Administration to achieve that end.

Questions:

1. To what extent will we know how growth funding is being used and with what impacts?
2. Do we know yet whether there are counties that have or plan to stop or change their implementation of formerly General Fund-only programs over which they were given additional flexibilities in 2012-13? Will we know if they do?

3. Continuum of Care Reform (CCR)

Budget Issue: The 2012-13 budget included trailer bill requirements (in SB 1013, Chapter 35, Statutes of 2012) for the department to develop, in consultation with a stakeholder workgroup, recommended revisions to the current rate-setting system, services, and programs serving children and families in foster care settings, with a particular focus on foster family agencies and group homes. SB 1013 also requires the department to develop performance standards and outcome measures for providers of foster care, again with a focus on foster family agencies and group homes, as well as transitional housing program-plus (THP-Plus). Further, SB 1013 suggests that the department, in consultation with the workgroup, may develop a better means of identifying children's needs and matching them with the most appropriate placements, as well as a procedure for identifying children who have been in congregate care for one year or longer, determining the reasons they remain in group care, and developing an individualized plan for their transitions to less restrictive, family-based settings. The department is authorized to temporarily make some changes through all-county letters and required to report on recommendations that necessitate statutory changes by October 1, 2014.

The Governor's budget also proposes \$249,000 (\$166,000 GF) and authorization to make one limited-term position (otherwise scheduled to expire on June 30, 2013) permanent, as well as funding for two years of consultant services, to support the department's CCR work.

Background on Placement Decisions: County child welfare and probation agencies are generally responsible for making decisions about where children in out-of-home foster care reside. They are required to attempt to place children in placements along the following order: 1) the home of the child's noncustodial parent, relatives, or extended family members, 2) foster family homes licensed by counties, 3) foster family homes certified by foster family agencies (FFAs), 3) group homes, and 4) specialized treatment facilities. As depicted in the chart on page 4, this is also generally the ordering of less to more costly placement types.

Background on the Use and Funding of Group Homes: Group homes have 24-hour staffing and licensed capacities to house at least six (and in a few instances up to over 200) children. Reforms related to the use of, or measurable outcomes of, group care have been a consistent theme in child welfare in California for over a decade. There has generally been consensus that group care should only be used sparingly, on a temporary basis, and when youth have a high need for structure and treatment or rehabilitation. Yet advocates and researchers continue to raise concerns that these principles are not consistently applied and that there are unintended consequences of the state's use of group care.

Parallel with the decline in the number of children in foster care, the number of children in group homes has dropped in recent years (from 10,900 in 1998 to 6,200 as of January 1, 2013). As a proportion of overall foster care placements, group home placements have remained steady at around six to 10 percent. It is important to note, however, that the proportion of probation-supervised foster youth placed in group homes is much larger, at 55 percent as of January 2013 (versus seven percent of child-welfare supervised foster youth).

There are heavy restrictions on the use of group homes for children under age six. Children as young as six do, however, reside in group homes.

Based on a very preliminary look, the department indicates that there are 1,063 children (as of 2/21/2013) who have been in the same group home for at least one year. The distribution of these children by age and length in the group home is described in the chart below. This does not include children who may have been in more than one group home within a year or children who were in some other placement in between group homes. DSS is working on a methodology to bridge multiple group home placements together to get a more accurate count of the population of children who have resided in group homes for more than one year.

Number of Children	
By age group & time in the same Group Home	Total
7 years old	4
at least 1 year, but under 2 years in a GH	4
8-10 years old	51
at least 1 year, but under 2 years in a GH	36
2-3 years in a GH	15
11-13 years old	207
at least 1 year, but under 2 years in a GH	140
2-3 years in a GH	67
14-16 years old	474
at least 1 year, but under 2 years in a GH	313
2-3 years in a GH	157
7-10 years in a GH	4
17 years old	327
at least 1 year, but under 2 years	217
2-3 years in a GH	109
7-10 years in a GH	1
Total	1,063

Beginning in 2010-11, the budget has included around \$196 million (\$52 million GF) to fund a court-ordered increase of 32 percent in the monthly payment rates for group homes. The court order also requires the state to annually adjust these rates based on the California Necessities Index. In response to this increased cost and the other longstanding concerns mentioned above, as well as the need for DSS to redirect staff toward continuing to develop alternative placement options, since 2010-11, state law has also placed a moratorium, with some allowable exceptions, on the licensing of new group homes or approvals of rate or capacity increases for existing providers. The Governor's budget for 2013-14 proposes monthly rates for group homes of \$2,223 to \$9,419 per child.

Related Services & Initiatives: Monthly foster care rates are intended to cover the costs of care and supervision. Although many other supports and services can be critical to the success of these living arrangements (e.g., mental health services for the child or family, respite care for caregivers), eligibility for those services is not generally tied to the type of placement in which a child resides. Several recently developed or emerging programs, including wraparound and treatment foster care, attempt to improve the planning processes for

integrating placements and supportive services. Additionally, the department indicates that the settlement agreement stemming from a recent lawsuit, *Katie A. v. Bonta*, will result in improvements in access to mental health services and supports and family-based placements for children in foster care.

Staff Comment & Recommendation: Staff recommends holding this item open and continuing discussions with the department and stakeholders about opportunities for short-term, as well as long-term, reforms, particularly with respect to lengthy group home stays and the use of group care for younger children.

Questions:

1. What is happening to reduce the use of group homes and encourage the successful placements of more foster youth, including probation-supervised youth, in family settings?
2. What more can be done in the short-term to reduce in particular the use of group home placements for young children (e.g., six to twelve year olds) and the use of group homes as long-term placements (e.g., for more than one year)?
3. Is the CCR workgroup on track toward developing the required recommendations for changes in rate-setting and in measuring the outcomes achieved by foster care providers?

4. Staff for Title IV-E Waiver Demonstration Capped Allocation Project (CAP) & Resource Family Approval Project

Budget Issue: The Governor's budget proposes \$596,000 (\$298,000 GF) and authorization to extend for one additional year in 2013-14 two limited-term positions, as well as fund an evaluation, to assist with implementation of the Title IV-E Waiver Demonstration CAP. The budget also proposes \$207,000 (\$101,000 GF, \$70,000 Local Revenue Fund, \$36,000 federal funds) and authorization for two positions to continue implementation efforts for the Resource Family Approval Project.

Background on the Title IV-E Waiver Demonstration: On July 1, 2007, two California counties—Alameda County and Los Angeles County—began implementing the state's initial Waiver Demonstration CAP for funding under Title IV-E of the federal Social Security Act. Under this waiver, the counties received more flexible, capped Title IV-E allocations combined with related state and local capped allocations (instead of more open-ended, entitlement-utilization based funding that could be used only for a narrower set of purposes). Some of the goals were to assist the child welfare and probation systems in these counties to develop and implement alternative services to out-of-home foster care and to bring about better outcomes for children and families. DSS is currently in the process of negotiating with the federal government over terms and conditions for a new five-year extension of the state's initial Title IV-E waiver. Up to 21 additional counties have expressed interest in potentially participating in the new waiver extension as well. An evaluation of the initial waiver was completed by San Jose State University in December 2012. According to the department, the federal government will require additional evaluation of the waiver extension.

Background on the Resource Family Approval Project: The resource family approval pilot established by AB 340 (Chapter 464, Statutes of 2007) requires a three-year pilot program in up to five counties to establish a single, comprehensive approval process for foster care and adoptive families. This project was also included in the state's Program Improvement Plan in response to the 2002 federal Child and Family Services Review. After several prior implementation delays, a 2012-13 realignment-related budget trailer bill, SB 1013 (Chapter 35, Statutes of 2013), delayed the start date for the project to January 1, 2013, and extended authorization for the project statewide after the initial years of work in early implementation counties are completed. This project is intended to make the licensing process less cumbersome and to prevent unnecessary delays in finding permanent families for foster children. The current licensing process divides caregivers into relatives, foster family homes, and adoptive homes. All caregivers must meet health and safety standards, but the processes for each vary and can be duplicative.

Staff Comment & Recommendation: Staff recommends that the Subcommittee approve the requested resources and positions to support the IV-E Waiver CAP extension and hold open the requested resources and positions related to the Resource Family Approval project.

Questions:

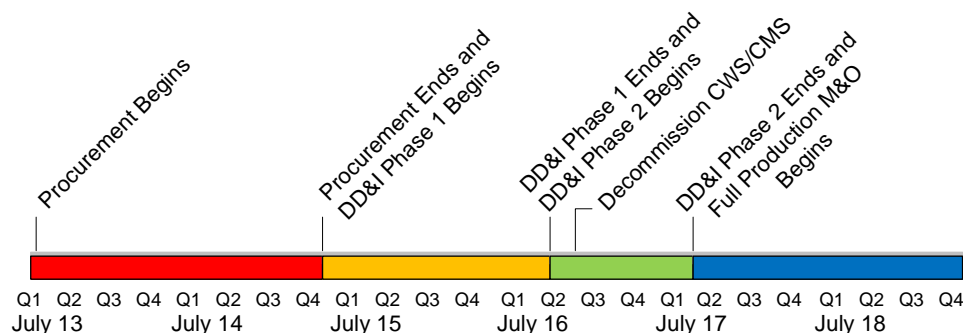
1. Please briefly summarize each request.
2. What are the most critical things we learned from the evaluation of the initial Title IV-E waiver implementation?
3. When are the early implementation counties for the Resource Family Approval project expected to begin using a unified approval process?

5. Child Welfare Services- New System Project

Budget Issue: The Governor's budget proposes \$10.3 million (\$4.6 million GF) in 2013-14 for planning activities at the outset of the Child Welfare Services- New System Project (CWS-NS). According to the Office of Systems Integration (OSI), the anticipated total one-time costs up through the design and development of the system, which is expected to finish in 2017, are \$351.1 million (\$154.9 million GF). Compared to continuing to operate the current Child Welfare Services/Case Management System (CWS/CMS) and making necessary changes, however, the Administration estimates that the state will realize savings by completing the CWS-NS system because of its reduced maintenance and operations costs. Additional analysis that compares the alternatives that led to the decision to move forward with the CWS-NS system is available online at: <http://www.cdss.ca.gov/cdssweb/PG2400.htm>.

Of the proposed 2013-14 funding, \$4.3 million (\$1.9 million GF) would support staffing at the Office of Systems Integration (OSI) (\$2.4 million total, with authority to establish eight new positions) and the Department of Social Services (DSS) (\$1.9 million total, with authority to establish nine new positions). With these additional positions, there would be a total of 18 staff at OSI and 13 staff at DSS dedicated to this initial phase of the project, along with six county consultants. The anticipated timeline for the project is:

Table 1 – CWS-NS Project Timeline



Background: CWS/CMS was fully implemented and transitioned to its operational phase in 1998. DSS has overall responsibility for the system, including providing project and program direction to OSI. OSI provides information technology expertise and is responsible for

implementation and day-to-day operations of the system. The current contract for CWS/CMS runs through November 2016, with potential extensions of up to three years.

In 2011-12, the Legislature and Governor suspended a previous effort (called CWS/Web) to update CWS/CMS's outdated technology, improve efficiency, and better comply with federal requirements. The 2011-12 budget also included trailer bill language in Assembly Bill 106 (Chapter 32, Statutes 2011) that required the Administration to report on aspects of the CWS/CMS system and make recommendations about the best approach and next steps for addressing any critical missing functionalities. The Administration developed a CWS Automation Study Team (CAST) in response to these requirements. The report from the CAST was completed in 2012 and concluded that it was neither feasible nor cost-effective to maintain and enhance the old technology of the existing system. The recommended strategy for replacing it was a Buy/Build alternative that involves the purchase and customization of an application that is already available (e.g., off-the-shelf software or a system currently in use or production in another state). The Feasibility Study Report (FSR) for CWS-NS was approved by the California Technology Agency in January 2013.

Staff Comment & Recommendation: Staff recommends that the Subcommittee approve the requested staffing and corresponding resources for DSS and OSI.

Questions:

1. Please summarize the anticipated timeline and costs for developing the CWS- New System and decommissioning CWS/CMS and the need for the requested resources.

6. Foster Family Home and Small Family Home Insurance Fund

Budget Issue: The Administration proposes, in a spring finance letter, to reduce the previously proposed 2013-14 funding for the Foster Family Home and Small Family Home Insurance (FSH) Fund by \$140,000 GF. The letter also proposes a one-time transfer of \$2.3 million from the FSH Fund to the General Fund to return what the Administration identifies as excess surplus funds that have accumulated because recent expenditures have been lower than budgeted. After the transfer, the department estimates there would be a reserve of approximately \$1.5 million that could be utilized if claims exceeded the new, lower amount the Administration proposes to include.

Total FSH funding, claims paid, and reserves for recent years and as proposed include:

Fiscal Year	Total Budgeted Funding	Total Budgeted GF	GF changes per FY	Reserve at end of fiscal year	Claims paid in fiscal year
2009-10	2,136,000	1,140,000	0	5,391,093	5
2010-11	2,136,000	1,140,000	-3,000,000* (transfer to GF)	3,166,637	2
2011-12	1,596,000	640,000	-500,000	3,538,389	2
2012-13	1,736,000	740,000	-400,000	-	-
2013-14	1,596,000	600,000	-140,000**	-	-
* DOF EO 11/12-27 (2010-11) as partial solution to backfill of GF for cancellation of sale of state buildings					
** In addition to reduction of \$140K to align expenditures; the Administration proposes a transfer of \$2.3 million to the General Fund					

Background: The FSH fund was established in 1986 to pay, on behalf of foster family homes and small family homes, claims of foster children or their parents or guardians stemming from an accident that results in injury neither expected nor intended by the foster parent. Foster family homes and small family homes that are licensed by DSS, or by a county, are currently eligible for coverage. Foster family agency (FFA)-certified homes or relative guardians providing care and receiving assistance through the Kinship Guardianship Assistance Payment Program (Kin-GAP) are not covered by this fund. The FSH fund also does not cover any loss arising out of a dishonest, fraudulent, criminal, or intentional act.

In September 2011, the Bureau of State Audits (BSA) released a report regarding the FSH Fund. The audit concluded that 90 percent of surveyed foster families were unaware of the existence of the FSH Fund and recommended that DSS improve efforts to inform the families. The audit also identified concerns with administration of the Fund and recommended that DSS revise its methodology for budgeting the annual resources needed. Finally, in response to part of the underlying request from the Joint Legislative Audit Committee, the audit identified an estimated cost of \$967,500 if the Legislature and Governor were to extend coverage under the Fund to FFA-certified homes and an unknown cost to extend coverage to families receiving Kin-GAP. According to the department, legislation in 2012 (Chapter 642, Statutes of 2012) addressed some of the recommendations made by the BSA audit.

Staff Comment & Recommendation: Staff recommends that the Subcommittee hold this item open.

Questions:

1. To what does the department attribute the lower than budgeted expenditures from the FSH Fund?
2. How has the department improved outreach efforts to ensure that families know about the FSH Fund since the 2011 audit by the BSA?
3. What would happen if claims for FSH coverage in 2013-14 exceeded the amount budgeted for the Fund?

7. Proposed Suspension of Mandate Related to Investigating Abuse and Neglect Allegations

Budget Issue: The Governor's budget proposes to suspend, in 2013-14, parts of the Child Abuse and Neglect Reporting Act (CANRA) that collectively form what is called the Interagency Child Abuse and Neglect Reporting (ICAN) mandate. Suspending this mandate would make local compliance with the provisions of related statutes optional in 2013-14. Because the Commission on State Mandates (CSM) has not yet identified a statewide cost estimate for this mandate, the Governor's proposal would not result in any budgetary savings in 2013-14. However, the suspension of the mandate would stop any additional costs for local governments' compliance with the requirements from accruing during the budget year.

Background: CANRA requires individuals in certain professional occupations (who are referred to as "mandated reporters") to report child abuse and neglect to specified law enforcement agencies or county welfare and probation departments. CANRA further requires local law enforcement, county welfare, and probation agencies to forward certain reports of child abuse and neglect to the Department of Justice (DOJ) for entry into the state's central child abuse and neglect reporting system, the Child Abuse Central Index (CACI). Since the 1980 enactment of CANRA, the law has been amended several times to include additional mandated reporters and specify additional reporting and investigative requirements of child protective agencies. The provisions the CSM determined to be included in the ICAN mandate in 2007 required specified agencies to:

- Distribute the mandated report form to mandated reporters
- Accept reports from mandated reporters when the agency lacks jurisdiction, and forward the report to the agency with jurisdiction
- Refer, or "cross-report," to other child protective agencies known instances of: 1) child abuse and neglect, and 2) child deaths that are suspected to be related to child maltreatment
- Investigate child abuse and neglect reports to determine if they are substantiated, inconclusive, or unfounded, and submit a report to DOJ for cases that are not unfounded for entry in CACI
- Notify suspected child abusers of CACI reports related to them that are made to DOJ and inform mandated reporters of case disposition upon completing an investigation
- Obtain the original investigative report used to make the CACI report, and make an independent evaluation as it relates to the agency's investigation, prosecution, employment, licensing, or child placement decisions
- Notify relative caregivers that they are in CACI if this information becomes available when an agency evaluates the placement of children with relatives

Following the CSM decision, Chapter 468, Statutes of 2011 (AB 717, Ammiano), specified that as of January 1, 2012, local law enforcement agencies no longer are required to report child abuse and neglect cases to CACI. As many of the ICAN mandated activities related to CACI reporting (including investigations and preparation of the CACI report), Chapter 468 significantly limited the scope of the ICAN mandate for those agencies. Additionally, Chapter 468 limited the number of reports that county welfare agencies are required to make to CACI

to only those cases that are substantiated. The CSM released draft parameters and guidelines for reimbursement of the remaining ICAN mandate in March 2013 and is scheduled to consider them at a hearing on April 19, 2013.

LAO Analysis: While cautioning that any estimate of annual costs for the ICAN mandate is subject to significant uncertainty at this time, the Legislative Analyst's Office (LAO) estimates, based on a review of prior, somewhat similar state mandates, that the annual costs for the ICAN mandate in 2013-14 could be in the range of a few million dollars to the low tens of millions of dollars. In an analysis that can be found online at:

<http://www.lao.ca.gov/laoapp/budgetlist/PublicSearch.aspx?Yr=2013&KeyCol=725>), the LAO additionally expresses concerns that suspending these mandates could weaken the state's system of child abuse and neglect reporting and tracking if some local agencies ceased sharing information and/or submitting reports to CACI. The LAO also identifies concern that the due process rights of individuals reported to CACI may be undermined if the mandate is suspended. The LAO therefore recommends that the Legislature reject the Governor's proposal to suspend the mandates in 2013-14 and instead establish a workgroup to evaluate the mandate, develop options to limit its costs, and consider alternative reimbursement methods for funding its activities and report back to the Legislature by the summer of 2013.

Staff Comment & Recommendation: Action on this item will be taken in Subcommittee #4 when they address mandate-related proposals more generally. Staff recommends that this Subcommittee coordinates with Subcommittee #4 and notes that irrespective of their decision regarding the 2013-14 suspension proposal, the workgroup recommended by the LAO appears to be a helpful endeavor.

Questions:

1. Please briefly summarize the activities included in the ICAN mandate and the potential effects of the proposal to suspend them.

B. 4300 Department of Developmental Services - Overview and Developmental Centers**1. Department Overview**

With proposed 2013-14 funding of \$4.9 billion (\$2.8 billion GF), the Department of Developmental Services (DDS) oversees services provided to children and adults with developmental disabilities who reside in the community. These services are coordinated by 21 regional centers, which are non-profit organizations that provide diagnosis and assessment of eligibility and help plan, access, coordinate, and monitor consumers' services and supports. The Department also oversees the care provided to individuals with developmental disabilities who reside in four state-operated developmental centers (DCs) and one state-operated community facility.

The Governor's proposed 2013-14 budget, as compared to the 2012-13 budget, includes:

Program	Total 2012-13 funding	Total 2013-14 funding	2012-13 Average Caseload	2013-14 Average Caseload	2012-13 Authorized State Staff Positions	2013-14 Authorized State Staff Positions
Community Services	\$4.2 billion	\$4.3 billion	256,872	266,100		
Developmental Centers	\$545 million	\$539 million	1,552	1,304	5,154	4,768
DDS Headquarters	\$38 million	\$39 million			374.5	374.5

Eligibility & Caseload: To be eligible, an individual must have a disability that began before his or her 18th birthday. The disability must be: 1) significant, 2) expected to continue indefinitely, and 3) attributable to specified conditions, such as mental retardation, autism, epilepsy, cerebral palsy, and related conditions. Infants and toddlers (age 0 to 36 months) may also be eligible due to an established risk of having developmental disabilities or a developmental delay. Eligibility for services and supports may last for the remainder of an individual's lifespan. Most services and supports are provided at no charge (a few exceptions that involve some cost sharing by specified parents of minor children are described later in this agenda). The developmental services caseload has grown each year from 2002-03 (when it included 190,000 individuals) to today.

Recent Reductions to the System: Between 2009-10 and 2012-13, state budgets have included significant General Fund cost containment solutions related to developmental services. Taken together, the savings resulting from these changes combined to over \$1.3 billion General Fund in the years they were enacted.⁵ The savings generally came from: 1) increased use of federal and other funding sources, 2) reductions in the rates of payments to

⁵ Several of these changes also result in ongoing, annual savings, although the amounts will vary over time and in combination with caseload and other changes.

regional centers and service providers (ranging from 1.25 to 4.25 percent), and 3) administrative changes, cost-control measures, and some service reductions. As an example of a service reduction that stakeholders continue to express serious concern about the impacts of, in 2009-10 the budget restricted eligibility and services available to some infants and toddlers through the Early Start program.

In 2012-13, the budget solutions also included a series of statutory changes intended to redesign services for consumers with especially challenging needs. These changes include significant restrictions on the statutory criteria for admissions to DCs, limitations on the use of locked mental health facilities and out-of-state placements, and provisions to strengthen the capacity of the community to serve these individuals (including expanded availability of Adult Residential Facilities for Individuals with Special Health Care Needs and the creation of a statewide Specialized Resource Service).

Staff Comment & Recommendation: This item is included for informational and context-setting purposes. No action is recommended.

Questions for the Administration & LAO:

1. Please briefly describe the overall developmental services system and the factors driving anticipated increases in the number of consumers served and in their service utilization.

2. Developmental Center Budget Overview

Budget Issue: DDS operates four institutional Developmental Centers (DCs) and one smaller state-operated community facility that care for adults and children with developmental disabilities. The Governor's proposed budget for DCs includes \$539 million (\$279 million GF) to serve an estimated average of approximately 1,300 residents in 2013-14. Compared with last year's enacted budget, this includes an anticipated decline by 240 residents, 388 authorized state staff positions, and \$11.2 million (\$7 million GF) in funding.

Background: California has been reducing its use of DCs as a placement for individuals with developmental disabilities for decades (from a high of over 13,000 individuals in 1968 to around 1,500 currently). This reduction is consistent with national trends that support integrated services and reduced reliance on institutions, as well as the United States Supreme Court's 1999 decision in *Olmstead v. L.C., et al.* As a result, several DCs have also been closed (and as discussed below, the Lanterman DC is currently undergoing a closure process).

Under the law that existed prior to 2012 statutory changes, individuals with developmental disabilities could be placed in DCs through involuntary judicial commitment because they were deemed to be a danger to themselves or others, or in order to restore their competency to stand trial on criminal charges, or with judicial review in other circumstances, including voluntary placements. DDS data from 2011-12 indicated that approximately 100 new admissions to DCs were occurring annually in recent years. While some of these admissions were court-ordered and required for individuals who may not be able to understand criminal

charges filed against them, others were considered avoidable with appropriate community resources. As a result, the 2012-13 budget included language restricting new admissions to DCs, except under specific conditions, including when individuals are committed under the state's Incompetent to Stand Trial statute and when individuals are in need of short-term care based on a judicial determination that they are dangerous to themselves or others due to a crisis. These individuals in crisis can be placed temporarily at the Fairview Developmental Center.

In part because of the large fixed costs to operate the grounds and facilities and serve remaining consumers, the budget for DCs has not declined to the same degree as the decline in the number of residents. The department determines the staffing needs of DCs by using established formulas that take into account the resident population, number of programs and units, square footage or acreage, and number of employees. Approximately 40 percent of staff are level-of-care nursing and professional staff, while the remaining 60 percent are non-level-of-care staff (e.g., medical director, groundskeeper, peace officers, housekeepers, plumbers, food service staff).

Staff Comment & Recommendation: This is an informational issue and no action is required.

Questions:

1. From 2012-13 to 2013-14, the overall budget for DCs is estimated to decline 1.6 percent, while the number of residents is estimated to decline by around 16 percent and number of authorized staff by around 8 percent. Please discuss the reasons for these differences in the degree of year-to-year change among these measures.

3. Sonoma Developmental Center

Budget Issue: Sonoma Developmental Center (SDC), in the town of Glen Ellen, California, has approximately 506 residents with developmental disabilities. The facility is authorized for approximately 1,502 state staff positions, 83 percent of which are currently filled. The proposed 2013-14 overall budget for SDC includes approximately \$152.7 million (\$79.2 million GF). This funding includes a \$2.4 million increase (\$1.3 million GF) that would allow the facility to hire approximately 36 additional direct care staff. The addition of these staff members would correspondingly allow staff who serve as shift leads to focus on supervision, without being counted toward required ratios of direct care staff to clients. Sonoma is the only DC where shift leads have been counted toward meeting those ratios.

Four out of 10 of SDC's Intermediate Care Facility (ICF) units, with 111 consumers who currently reside in them, were recently withdrawn from federal certification by DDS in response to notice that the federal government was moving to decertify the larger group of ICF facilities at SDC. The federal government's concerns, and DDS's resulting withdrawal of these units from certification, came on the heels of findings last year regarding multiple instances of abuse, neglect, and lapses in caregiving at SDC. DDS indicates that its decision to withdraw

these specific units from certification was based on the expectation that the problems faced in these units would take longer to resolve than those impacting the remainder of the ICF units. Given how recently DDS withdrew these units from certification, the Governor's January budget did not include the impacts of associated federal funding losses of approximately \$1.4 million monthly. The Administration indicates that these funds will need to be backfilled for some months in 2012-13 and for any months in 2013-14 in which the units are still not certified. The Administration has not yet determined how these resources will be identified within or as an addition to DDS's budget authority for 2012-13.

Additional Background on the Problems at SDC: In July 2012, licensing staff from the California Department of Public Health (DPH) conducted an annual state licensing and federal certification survey of SDC. During the visit, DPH staff found numerous violations. Among the findings were that SDC's management failed to take actions that identified and resolved problems of a systemic nature, failed to ensure adequate facility staffing, failed to provide active treatment, and failed to provide appropriate health care services and meet several other key requirements. According to page three of the report, "Individuals have been abused, neglected and otherwise mistreated and the facility has not taken steps to protect individuals and prevent reoccurrence. Individuals were subjected to the use of drugs or restraints without justification. Individual freedoms have been denied or restricted without justification." On four separate occasions, the team identified conditions that posed immediate jeopardy to the health and safety of patients at the facility. Among the concerns of surveyors were:

- Thirty-five incidents in which residents with a condition called pica ate non-edible items such as gloves, buttons, sunglasses, paper and other items.
- Eleven clients who bore injuries that resembled burns from a stun gun. Facility law enforcement personnel found a loaded gun and a stun gun of another type in a staff member's car.
- The sexual assault of two residents by a staff member.
- Inadequate supervision of clients resulting in falls, attacks upon other consumers, clients who ran from the facility, and heightened anxiety among some clients.
- Severe and consistent understaffing patterns which resulted in employees being forced to work consecutive shifts, units being frequently short-staffed and staff members being moved into units to care for consumers they did not know.
- The death of one client that the investigators believed was caused by acute peritonitis related to a misplaced gastrostomy tube.

Staffing at SDC: In comparison to other DCs, it is notable that SDC has the highest vacancy rate (at 17 percent) and relies disproportionately on the use of overtime, including mandatory overtime (e.g., at 20,100 total hours and close to 7,100 mandatory hours in February 2013), in order to meet required staff to client ratios. The Sonoma DC also has a larger proportion than other DCs of unlicensed staff (at 37 percent as of March 1, 2013) serving in classifications for which licensure is relevant. The Department indicates that it is in the process of hiring additional staff to fill vacancies at the facility and reduce the use of overtime.

DDS Actions: DDS removed two top executives at SDC in the wake of the systemic concerns identified and recently announced the hiring of a new Executive Director for the facility. The department also contracted with an internal monitor for ongoing evaluation, required unannounced checks, and implemented a number of new policies designed to provide closer supervision and better training for staff. In March, the department entered into an agreement with the federal government that established a Program Improvement Plan (PIP) that includes corrective actions it must take in order to retain certification of the units that have not been decertified. The PIP outlines several actions SDC must take to remain certified, including entering into a contract with an independent entity that will perform a root cause analysis, developing action plans to correct identified deficiencies, and reporting monthly progress to DPH. The department has not yet indicated the timeframe in which it anticipates seeking recertification of the units that are currently without federal certification.

LAO Recommendation: Given the recent problems at SDC, as well as other significant concerns related to DCs spanning the last decade, the LAO recommends that the Legislature consider strengthening DC oversight by creating an independent Office of Inspector General (OIG). The LAO estimates costs of \$500,000 to \$1 million for this function and suggests that the department identify resources that could be redirected to provide that funding.

Staff Comment & Recommendation: Staff recommends holding this issue open.

Questions for DDS:

1. Please briefly describe the central features of the Program Improvement Plan and identify approximately when you anticipate that the ICF units that are not currently certified may be ready for recertification.
2. What are your plans for addressing the fiscal impact of the loss of certification of the four units during the 2012-13 fiscal year and potentially in 2013-14?
3. With respect to staffing:
 - a. Why was SDC's practice of having supervisory staff count toward required staffing ratios different than other DCs?
 - b. How are the department and facility leadership working to decrease the use of overtime and increase the presence of licensed staff at the facility? When and how much can we expect to see improvements in these measures?

Questions for Panel of Stakeholders:

1. What, if any, improvements have you seen in the quality of care and safety of residents in the ICFs at SDC in recent months?
2. What are your most critical remaining concerns and what would you suggest might be done to alleviate them?

4. Closure Process for Lanterman Developmental Center

Budget Issue: The Governor's proposed 2013-14 budget for the Lanterman Developmental Center (LDC), which is in the process of transitioning its residents into community-based placements as part of a closure process, includes \$89.3 million (\$46.4 million GF). This is a decline of \$11 million (\$6.2 million GF) from 2012-13. The proposed funding level assumes continuation of \$8.2 million (\$4.4 million GF) in enhanced funding for 88 staff positions that would otherwise have been eliminated as the number of residents declined, pursuant to the standard ratios of staff to residents. These positions were approved as enhanced staffing related to closure activities as part of the 2012-13 budget.

Background: LDC is in Pomona and consists of 11 client residences, one acute hospital unit, a variety of training and work sites, and recreational facilities, including a camp. At its peak, LDC housed more than 1,900 individuals. DDS submitted its plan to close LDC to the Legislature in January 2010. The plan was approved in October 2010. At the time, there were approximately 400 residents and 1,300 staff at the facility. The Department indicated then that the closure process would take at least two years. As of March 1, 2013, there were 207 residents at LDC. The department recently estimated that the transitions of residents to the community would be completed in 2014.

The Transition Process: According to the department, the transition of each LDC resident is only occurring after necessary services and supports identified in the IPP process are available

Some Facts about LDC Residents:

- The majority have lived there for more than 30 years and are between 40 and 65 years old.
- 75% have profound intellectual disabilities.
- Primary service needs include:
 - 34% Protection and Safety
 - 25% Significant Health issues
 - 25% Extensive Personal Care
 - 15% Significant Behavioral issues

elsewhere. The closure process is thus focused on assessing those needs and identifying or developing community resources to meet them. However, of the 207 remaining residents of LDC as of March 1, the Department indicates that 70 percent have a comprehensive assessment that has been completed within the past two years (up from 55 percent on December 1, 2012). Regional centers report that nearly all LDC residents will have updated assessments by June 2013.

The department and 12 regional centers involved in the closure process use Community Placement Plans as one tool to help them identify and develop necessary community-based resources. DDS has also received recommendations from advisory groups and indicates that its staff meets regularly

with parents and family members of LDC residents, LDC employees, and the involved regional centers.

The department indicates that the vast majority of former LDC residents who have moved to the community now reside in Adult Residential Facilities, which are licensed by the Department of Social Services. As part of the transition, DDS visits consumers who have moved into

community residences at 5 days, 30 days, 90 days, and 6 and 12 months after the move. Regional centers also visit at regular intervals and provide enhanced case management for the first two years after the move. Special incidents, including hospitalizations and other negative outcomes, are tracked by DDS, and individuals who move from Lanterman into the community are asked to participate in a National Core Indicator (NCI) study. The NCI study uses a nationally validated survey instrument that allows DDS to collect statewide and regional center-specific data on the satisfaction and personal outcomes of consumers and family members.

One of the transition-related challenges identified by providers and regional centers is the time lags that can occur between community-based homes' licensure and their first occupancy, as well as full occupancy. DDS indicates that the average lag time between licensure and first occupancy has been 71 days for non-profit-owned homes and 120 days for other homes. The average lag between first occupancy and full occupancy has been 176 days for non-profit-owned homes and 209 days for other homes.

Anticipated Timelines: The Department has declined to give a target date for closure of the facility, indicating that the development of necessary community resources for each consumer is a continual and complex process. Some stakeholders have suggested that a closure date might help to guide the rest of the process toward more successful and timely completion; others have expressed concern that identifying such a date might create a distraction or inappropriate pressure to have consumers move before all necessary preparations have been made. In 2012, the Legislature requested for the Department to identify anticipated timeframes for the remaining transitions and steps in the closure process. The Department's response includes the following anticipated milestones and timelines:

- Completion of up-to-date comprehensive assessments for all remaining residents – June 2013
- All residential facilities that need to be developed are licensed and ready for occupancy – January 2014
- Specific living options are selected and initial transition planning meetings for all residents have been held. All new day programs are licensed and available to provide services – March 2014.

Community State Staff Program: The Department has indicated that it will continue to provide trainings and information about the Community State Staff program to DC staff, families of consumers who live at LDC, and community-based providers. The program allows LDC staff to leave the facility and work for a community-based provider serving consumers who transition into the community, while retaining their status and benefits as state staff. The program is voluntary for the employees and providers.

As of December 1, 2012, only one community-based provider and one regional center had entered into or completed the process of contracting to opt in to the program. At the same time, the regional centers serving people moving from LDC and other stakeholders indicate that there are some providers that employ former DC staff outside of the program. For example, Inland Regional Center reported to DDS knowledge of nine former LDC employees who have been hired locally outside of the program. San Gabriel/Pomona Regional Center

(SGPRC) reported that over the years, providers in their area have hired fourteen former DC staff for residential and day programs, nine for direct care positions, and four as consultants to vendored programs. SGPRC also reported hiring five former DC employees themselves.

One distinction between the Community State Staff program for the Lanterman closure and the program operated for the earlier Agnews DC closure is that the retention of status and benefits for LDC staff is limited to up to two years after the closure of LDC. At one point there were 120 state staff working in the community under the program after leaving the Agnews DC. Currently (around four years after the last residents transitioned out of the Agnews DC), the department indicates that 28 state staff continue working in the community through the program. In addition to other specific comments with respect to what might allow the program to be utilized more, the Lanterman Parents Coordinating Council has requested for the Legislature to remove the two-year time limitation on the program for LDC staff.

Staff Comment & Recommendation: Staff recommends holding this issue open.

Questions:

1. What factors have led to delays in completing the closure process? How have and will the Department, facility leadership, regional centers, and other stakeholders address those concerns?
2. Particularly given that we are a few years into the closure process, why don't all LDC residents already have a current assessment of their needs (rather than around 70 percent as of March 1)?
3. Could it be helpful in some ways to identify a targeted closure date for LDC by which all consumers should have transitioned to the community? And on the other hand, what concerns might that raise?

C. 4300 Department of Developmental Services - Regional Center Local Assistance

The Governor's 2013-14 budget proposes a total of \$4.3 billion (\$2.5 billion GF) for developmental services that are anticipated to be provided to 266,100 individuals with disabilities who reside in the community. This includes an increase of \$177.5 million (\$89.2 million GF) due to updated caseload and expenditure information and the addition of 10,128 consumers to the caseload. Additional changes and proposals are described below.

Background: Ninety-nine percent of DDS consumers receive community-based services and live with parents or other relatives, in their own houses or apartments, or in group homes (of various models) designed to meet their medical or behavioral needs. Once individuals qualify for services under the Lanterman Act, the state provides these supports throughout their lifetime. These services and supports range from day programs to transportation or residential services. Determination of which services an individual needs is made by an interdisciplinary team that develops an Individualized Program Plan (IPP) (or Individual Family Service Plan (IFSP) if the consumer is an infant/toddler three years of age or younger). Services that are included in these plans are entitlements and regional centers purchase them if necessary (i.e., an individual does not have private insurance that covers the service and there is no "generic" or publicly provided service available).

1. Sunset of 1.25 Percent Reduction in Rates for Regional Centers and Community-Based Service Providers

Budget Issue: The Governor's budget includes a \$46.7 million (\$31.9 million GF) increase in costs resulting from the scheduled sunset of a reduction of 1.25 percent to the rates paid to regional centers and community-based providers of services.

Background: In each of the last several years, the Legislature and Governor have enacted temporary reductions to regional center Operations and Purchase of Services funding in order to save General Fund resources. In 2008-09 and 2009-10, the reduction was three percent (for estimated savings in 2009-10 of \$62 million GF). In 2010-11 and 2011-12, the reduction was increased to 4.25 percent (for estimated savings of \$89 million and \$108 million GF, respectively). In 2012-13, the reduction was decreased to 1.25 percent (for estimated savings of \$31.9 million GF). There were corresponding federal funding losses each year.

The statutory provisions creating the payment reductions also established some exemptions, including exemptions for supported employment, the State Supplementary Payment (SSP) supplement for independent living, and services with "usual and customary" rates established in regulations. Other exemptions were allowed if a regional center could demonstrate to DDS that a non-reduced payment was necessary to protect the health and safety of a consumer.

Many stakeholders indicated that these rate reductions (particularly when combined with other reductions to the developmental services system) created significant hardships for regional center staff and community-based service providers, which also impacted developmental services consumers.

Staff Comment & Recommendation: Staff recommends approving the continued assumption that the rate reductions which have been in effect in recent years will expire.

Questions:

1. Please briefly summarize the background behind the budgeted increase and the impacts of the recent rate reductions.

2. Trailer Bill Language on Regional Center Payments for Health Insurance Co-Pays
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Budget Issue: The Governor's budget includes increases of \$15 million GF in 2012-13 and \$9.9 million GF in 2013-14 to support payments by regional centers of health insurance co-pays for services identified as necessary in the consumer's IPP. The Department's estimates of these costs include both "co-pays" that are payments made by the insured directly to a health care provider for each service or visit, as well as what is known as "co-insurance" and refers to a balance of costs for services above and beyond what is covered by insurance.

The Administration also proposes trailer bill language to specify the conditions under which regional centers would be authorized to make such co-payments going forward- i.e., when necessary to ensure that the consumer receives the service or support, when health insurance covers the service in whole or in part, when the consumer (or family if the consumer is under the age of 18) has income that does not exceed 400 percent of the federal poverty level (FPL), and when there is no third party who is liable to pay for the cost. The Department estimates that roughly 50 percent of consumers or families, as applicable, have incomes below 400 percent of FPL. The proposed trailer bill language additionally provides flexibility for regional centers to cover co-pays for consumers or families with income above 400 percent of FPL under extraordinary circumstances when needed to successfully maintain the child at home or adult consumer in the least restrictive setting. The proposed trailer bill language also prohibits payment by regional centers of insurance deductibles (the amount the insured must spend on his/her own before insurance benefits can be utilized).

Background: Legislation, including recent budget trailer bill language, has emphasized the responsibility of regional centers to reduce state costs by pursuing services or funding from entities responsible for providing or paying for services to regional center consumers. This includes payment, as applicable, by health insurers and health plans. Related recent legislation confirmed the responsibility of insurers and health plans to pay the costs of behavioral health treatment (BHT) for individuals with autism (Chapter 650, Statutes of 2011 [SB 946, Steinberg]). BHT may be required as often as 3-5 times per week, which can result in significant copayments for families with private health insurance. The increased reliance on private insurance resulting from recent budget actions and the enactment of SB 946 has raised the issue of whether families with insurance are to incur the cost of copayments or whether copayments would be paid by regional centers, which would be responsible for the full cost of these services in the absence of insurance coverage.

The Department and other stakeholders have indicated that regional center practices with respect to insurance-related co-pays and deductibles have historically varied from region to region. The Department asserts that statutory clarification is necessary to establish a clear, statewide policy. Under existing state law, regional centers are required to identify and pursue all possible sources of funding for services, including but not limited to, government services and programs, e.g., Medi-Cal, and “private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.” [Welfare & Institutions Code Section 4659(a)]. In the case of a covered service having a co-pay, the entity’s maximum liability is typically the cost of the service less the co-pay. The Association of Regional Center Agencies recently obtained a legal opinion from a private attorney concluding that, under current state law, regional centers are responsible not only for copayments but also for insurance deductibles for services identified in a consumer’s IPP or IFSP. The legal opinion was widely circulated, and the department indicates that it will likely result in more regional centers covering these costs.

The department has indicated that administering deductible coverage could be more complex because deductibles are not as directly linked to utilization of a specific service that is included in an IPP or IFSP and may apply to an entire family, not just the developmental services consumer in particular. Some stakeholders have disagreed with this characterization and indicated that billings for deductibles can, and sometimes already do, specify both the service and the recipient of that service.

Several stakeholders have indicated a desire to see the proposed changes go further— e.g., to cover deductible payments in addition and to require, rather than authorize, coverage of co-pays and/or deductibles. Some have also indicated a desire to see coverage of co-pays be limited to behavioral health treatment for individuals with autism, while others have disagreed with that position.

Background on Other Limited Costs Borne by Consumers and Families: The state provides diagnosis and eligibility assessment services free-of-charge. Once eligibility is determined, most services and supports are also provided at no charge. However, parents whose incomes for their family sizes place them above the federal poverty level are required to pay a sliding scale share of the cost for 24-hour out-of-home placements for children under age 18. There are also co-payment requirements known as “family cost participation” for selected services, including day care, respite, and camping (which has been partially suspended in recent years), when those services are provided to a child who lives in his or her parent’s home and is not eligible for Medi-Cal. Finally, an annual family fee of \$150 or \$200 for specified families with adjusted gross incomes at or above 400 percent of the federal poverty level was enacted in a 2011-12 budget trailer bill. These limited cost-sharing programs have exemption and/or appeal processes that take into account factors such as parental income, the family’s extraordinary medical and other expenses, the number of children receiving regional center services, or demonstrated need to enable the family to maintain the child in the family home.

Staff Comment & Recommendation: Staff recommends holding this issue open.

Questions:

1. Please briefly summarize the reasons for the requested funds and trailer bill language.
2. Why doesn't the proposed language include coverage of deductible payments?
3. How much does the department estimate that it would cost to require, rather than authorize coverage of co-payments and co-insurance and to require payments of deductibles that are tied to services identified in IPP or IFSPs?

3. Proposed Elimination of Sunset for Annual Family Fee
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Budget Issue: The Governor's budget assumes \$7.2 million GF savings in 2013-14 from the continued payment of annual fees of \$150 or \$200 by families with children under the age of 18 living at home who receive services from regional centers beyond eligibility determination, needs assessment, and service coordination. As under existing law, the fees would only apply when the family has income above 400 percent of the Federal Poverty Level and the child or children do not receive Medi-Cal. There are also some specified exemptions, e.g., when necessary to maintain the child in the family home. The Administration also proposes trailer bill language to eliminate the sunset date that was enacted in 2011 of June 30, 2013, and as a result to make the program permanent.

The department estimated that 21,200 families should have been impacted by the annual fee policy in 2011-12; however, only 9,891 families were assessed a fee in that year, and the number of fees collected was even lower. The department indicates that it is working with regional centers to increase implementation of the existing requirements. Some stakeholders have expressed concerns regarding the complexities of administering the fees and their impacts on families.

Background on Costs Borne by Consumers and Families: See description under Item 2, immediately preceding this issue.

Staff Comment & Recommendation: Staff recommends holding this issue open.

Questions:

1. Please briefly summarize the proposal and its anticipated impacts.
2. Why hasn't the existing annual family fee policy been more broadly implemented?